Supreme Court, U.S.
FILED
04-584 OCT 27 2004
OFFICE OF THE CLERK

No. 04- ____

In the
Supreme Court of the United States

NATALIYA VLADIMIRONVA KONDAKOVA,
YURIY LEONIDOVICH KONDAKOV,
OLGA YRIEVNA KONDAKOVA,
Petitioners,

v.

JOHN D. ASHCROFT, ATTORNEY GENERAL,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

NATALIYA KONDOKOVA
YURIY LEONIDOVICH KONDAKOV
OLGA YRIEVNA KONDAKOVA
8962 PEONY LANE, N.
MAPLE GROVE, MN 55311
(612) 275-8166

Petitioners Pro Se

Becker Gallagher Legal Publishing, Inc., 800.890.5001

QUESTIONS PRESENTED

1. Whether the testimony of the Petitioners was in itself sufficient for a valid claim for asylum.

2. Whether the claims of harm by the Petitioners rose to the level of past persecution.

3. Whether the Petitioner's evidence contrary to the Department State Country Conditions Reports constitutes a valid basis for a claim of persecution.

PARTIES TO THE PROCEEDING

The Petitioners are individuals, Nataliya Kondakova, Yuriy Kondakov, and Olga Kondakova.

The Respondent is John D Ashcroft, Attorney General of the United States of America.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING ii

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES v

OPINION BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 2

STATEMENT OF THE FACTS 3

REASONS FOR GRANTING THE WRIT 5

I. The Petitioners have presented significant, detailed testimony in conjunction with documentation to support this testimony and this justifies a claim for asylum 5

II. The harm described by the Petitioners rises to the level of persecution 7

III. The contradiction of the Petitioners testimony with the Department of State Country Conditions Reports can be justified based upon their own submissions and the carryover from the Soviet times 9

CONCLUSION 12

APPENDIX

Appendix A
COURT OF APPEALS OPINION, 07/29/04 . . 1a-12a

Appendix B
DECISION OF THE BOARD OF IMMIGRATION APPEALS, 11/27/02 . . . . . 13a-14a

Appendix C
DECISION OF THE IMMIGRATION JUDGE, 08/19/98 . . . . . 15a-32a

Appendix D
Referral by the Chicago Asylum Office, 12/10/97 . . . . . 33a-35a

Appendix E
Letter from Kiev city government regarding the Christian School L.A.Sheludenko 36a-37a

Appendix F
Regarding the hospital stay of Yuriy Kondakov, Surgical Traumatology Center, Kiev 38a-39a

Appendix G
Notification of employment and salary, Nataliya Kondokova, Christian School of the Adventists 40a-41a

TABLE OF AUTHORITIES

Page

CASES

In Re Acosta, 19 I&N Dec. 211 (BIA 1985) 7

Bocur v. INS, 109 F.3d 399 (7th Cir. 1997) . . . 11, 12

Chebchoub v. INS, 257 F.3d 1038 (9th Cir. 2001) . . 6

Eusebio v. Ashcroft, 361 F.3d 1088 (8th Cir. 2004) 7, 8

Fatin v. INS, 12 F.3d 1233 (3d Cir. 1993) 7

Fisher v. INS, 37 F.3d 1371 (9th Cir. 1994) 7

Galius v. INS, 147 F.3d 34 (1st Cir. 1998) 10, 11

Ghaseminmehr v. INS, 7 F.3d 1389 (8th Cir. 1993) 5, 6

Gramatikov v. INS, 128 F.3d 619 (7th Cir. 1997) . . . 11

Kossov v. INS, 132 F.3d 405 (7th Cir. 1998) 10

Makonnen v. INS, 44 F.3d 1378 (8th Cir. 1995) . 7, 10

Mendez-Efrain v. INS, 813 F.2d (9th Cir. 1987) . . . 8

Mitev v. INS, 67 F.3d 1325 (7th Cir. 1995) 8, 9

Zalega v. INS, 916 F.2d 1257 (7th Cir. 1990) 8

STATUTES, RULES AND REGULATIONS

8 USC 1101(a)(42)(A) 1

8 USC 1158 1

28 USC 1254(1) 1

Supreme Court Rule 13(1) 1
INS Law Manual 7

The Petitioner's, Nataliya Kondakova, Yuriy Kondakov and Olga Kondakova respectfully request that this Court issue a writ of certiorari to review the judgment entered in this case by the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The opinion of the Eighth Circuit Court of Appeals, dated 07/29/04, on the merits is reported at No. 02-4151 and is reproduced in Appendix A at 1a -12a. The Decision of the Board of Immigration Appeals, dated 11/27/2002 is reported in Appendix B at 13a-14a. The decision of the Immigration Judge, dated 08/19/98, is located in Appendix C at 15a-32a. The decision of the Chicago Asylum Office, dated December 10, 1997 is reproduced at Appendix D, 33a-35a.

JURISDICTION

The opinion of the United States Court of Appeals for the Eighth Circuit was issued on July 29, 2004. This court has jurisdiction under 28 USC 1254(1). This appeal was timely filed within 90 days of the decision of the Eighth Circuit Court of Appeals, dated July 29, 2004. Supreme Court Rule 13(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

An alien found within the boundaries of the United States who is unable or unwilling to return to his country of origin may file for asylum. 8 USC 1158. The asylum claimant states that he/she is unable to return to his/her country of origin because of persecution or a well founded fear of persecution. 8 USC 1101(a)(42)(A).

STATEMENT OF THE CASE

The Petitioner's entered the United States on 07/16/96 at Chicago, Illinois. They had fled conditions of religious persecution in their native Ukraine. They filed an application for asylum on 10/14/96 with the Chicago Asylum Office. This claim was denied and referred to the Immigration Court in Bloomington, Minnesota in a decision dated December 10, 1997.

Their case for asylum, withholding of removal and application of the United Nations Convention Against Torture was heard by the Immigration Judge sitting in Bloomington, Minnesota. The Immigration Judge rendered a decision denying their claims for asylum, withholding of removal and application of the United Nations Convention Against Torture in a decision dated August 19, 1998. (Appendix C, 15a-32a). They were granted 30 days of voluntary departure. The Immigration Judge indicated that the Petitioner's lacked credibility, their testimony lacked the severity for persecution and their testimony did not match the United States Department of State Country Conditions Reports for Post Soviet Ukraine.

The Petitioner's appealed to the Board of Immigration Appeals. This claim was denied in a decision dated November 27, 2002. (Appendix B, 13a-14a). The BIA summarily affirmed the decision of the Immigration Judge. The petitioner's appealed to the Eighth Circuit Court of Appeals. Their Petition for Review was denied in a decision dated July 29, 2004. (Appendix 1a-12a). The Court indicated that the Petitioner's testimony was not credible, that the claimed harm did not rise to the level of persecution and that their claims were in opposition to changes in the Ukraine

as indicated by the Department of State Country Conditions Reports.

STATEMENT OF THE FACTS

The Petitioner's left their country of origin due to the persecution they suffered as a result of their association with the Seventh Day Adventist movement, including the management of a Christian school in the capital city of Kiev, named after A. Cheventenko, a pioneer in the Adventist movement in the Ukraine. The Petitioner and her mother were persecuted by both the former Soviet regime and the post Soviet government of the Ukraine.

The Petitioner's support of the Seventh Day Adventist Church aligned them in opposition to the Russian Orthodox Church which was the only accepted church during Soviet times. The Mother of the Petitioner had been a member of the Seventh Day Adventist Church since 1980. She was persecuted by the Soviet Regime for her faith and placed in two mental institutions as punishment. The Petitioner was persecuted by her peers during Soviet times as a result of her association with the Seventh Day Adventist Church.

The mother of the Petitioner started a Christian school in Kiev under the auspices of the Seventh Day Adventist Church. This school drew the ire of public officials and others in Kiev. The Petitioner served as a teacher at the school. As a result of the government's opposition to the school it was subject to unnecessary and cumulative inspections. Graffiti was painted on the walls and windows were broken by hooligans. The school was asked to renounce any of its curriculum that dealt with the Seventh Day Adventist Church. These officials asked that the school

remove from its curriculum, the phrase "the bible is Gods words". (Appendix pgs 36a-37a).

The Petitioner was persecuted by a professor at the University of Kiev by the name of Antonina Michilovna who was the wife of the former president of Ukraine. She would not allow the Petitioner to take a necessary exam.

The Petitioner was detained by the police on two occasions on the basis of her religious beliefs and advocacy and her association with the Seventh Day Adventist Church School, "Morning Sunrise". On the eleventh of September 1992 she was detained by police in Kiev for distributing literature door to door regarding the Seventh Day Adventist Movement. She was interrogated and beaten by members of the Ministry of Security even though there was no law against such activity in post glasnost Ukraine. She was detained for one night. The ministry of security indicated to her that she was an enemy of the people.

The Petitioner was also detained in September of 1994 after reporting graffiti and vandalism at the "School of the Morning Sunrise" The investigator who ordered her detained stated that she was opposing him and he would not tolerate an "Adventist" to do that. He also stated that maybe her unborn child would die or be crippled as a result of the confinement.

The Petitioner's daughter was kidnapped on June 26, 1995 by unknown persons as she gave directions to a passerby She assumes that the militia was involved in the kidnapping due to her involvement with the Seventh Day Adventists. When she asked the militia for help they mocked her and told her she should pray to God for help instead of requesting their assistance. They left a note for her at her residence that said "that she did not deserve her, you worship Satan and you're

dead because you wanted your daughter to follow your belief". The militia then called to say that they had her daughter. She was left on their doorstep.

The Petitioner's husband took an active role in support of the Christian school in Kiev. For this he was mocked and harassed by members of the local government and racketeers (mafia). He was involved in the sale of oil and lost substantial profits as a result of the activities of the local government and the mafia. He was beaten by unknown assailants on March 20, 1996. He believed that they were connected with the local mafia and that they sought to prevent his association with the Christian school. His stay in the hospital is documented. (Appendix E pgs 38a-39a).

REASONS FOR GRANTING THE WRIT

I. The Petitioners have presented credible testimony in conjunction with corroborative evidence that justifies a claim for asylum.

The Eighth Circuit Court of Appeals indicated that the Petitioner's presented incredible testimony that was uncorroborated. (Appendix A, 4a). The Immigration Judge indicated that the testimony was not sufficiently detailed, consistent nor believable. (Appendix A, 4a). Specifically, the Eighth Circuit noted that the Immigration Judge found that many items of testimony were not specifically noted in the asylum application. The findings of the Immigration Judge were to be given deference if supported by specific, cogent reasons for the adverse credibility finding. *Ghasemimehr v. INS,* 7 F.3d 1389 (8th Cir. 1993).

The Petitioners contest whether the proper standard was applied based upon the volume of specific testimony presented

in conjunction with various forms of documentation. In *Ghasemimehr v. INS,* the IJ found that the testimony of the Petitioner was to vague and speculative in nature and was unsupported by corroborative evidence. *Ghasemimehr* at 1391. The Eighth Circuit Court indicated the standard to be applied was whether no reasonable factfinder could fail to find a well-founded fear of persecution. *Ghasemimehr* at 1390.

The Petitioner's claim that a reasonable factfinder could not fail to find sufficient evidence of persecution The Petitioners presented specific detailed evidence that they had been persecuted during the Soviet times. Persecution of evangelicals, which included those of the Seventh Day Adventist faith, was common. The IJ did not refute the claims that the Petitioners mother had been confined to a mental institution on two occasions as a result of her participation in the Seventh Day Adventist movement. (Appendix C, 25a). While the IJ indicated that he was specifically aware of the Petitioner's failure to provide specifics in the asylum application, in contrast to *Ghasemimehr,* the Petitioners did present corroborative evidence. (see Appendix E,G, regarding Christian school)

The Immigration Judge indicated that there was no supporting evidence regarding several specific events reported by the Petitioner. According to the result in *Chebchoub v. INS,* 257 F.3d 1038 (9th Cir. 2001), corroboration is required if the evidence would be readily obtainable. In *Chebchoub,* the court found no less than 22 inconsistencies. The Petitioner failed to provide readily obtainable corroborative evidence. *Chebchoub* at 1038. In the present case, the Petitioner did not provide contested testimony in the conventional sense, but rather failed to include sufficient detail in the filed asylum application. It cannot also be said that the corroboration which the IJ indicated should be

available was readily available. The police will not maintain public records regarding extrajudicial detention.

II. The harm described by the petitioner did rise to the level of persecution.

The Eighth Circuit Court of Appeals indicated that the harm described by the Petitioner did not rise to the level of persecution and thus negated the Petitioner's claims for asylum, withholding of removal and application of the United Nations Convention Against Torture. (Appendix A, 8a-9a). The IJ therefore found that the Petitioner's had not suffered past persecution. (Appendix C, 26a). The IJ failed to find sufficient nexus between the harm suffered and a protected ground.

Persecution can be defined as harm or suffering imposed on the basis of characteristics or beliefs that the persecutor seeks to overcome. *In Re Acosta,* 19 I&N Dec. 211 (BIA 1985). This can include threats, physical abuse and repeated harassment that rises to the level of persecution. *INS Law Manual.* Persecution can be based upon the forced renunciation of a closely held religious belief or government action to compel an individual to engage in conduct that is not physically painful, but abhorrent to that individual's deepest beliefs. *Fisher v. INS,* 37 F.3d 1371 (9th Cir. 1994) citing *Fatin v. INS,* 12 F.3d 1233 (3rd Cir. 1993). The proof of a pattern or practice of persecution of similarly situated individuals can lessen the degree of individual proof necessary. *Makonnen v. INS,* 44 f.3d 1378 (8th Cir. 1995).

The Eighth Circuit pointed out that while the Petitioner claimed to have been beaten while in jail, this did not constitute persecution under the definition in *Eusebio v. Ashcroft,* 361 F.3d 1088, 1091 (8th Cir. 2004). There the

court found that the Petitioner had suffered a minor beating at the hands of security forces and in the context of reduced political violence in Togo, this did not constitute persecution. *Eusebio at* 1090. The dissent disagreed, stating that there was sufficient proof that the Petitioner had been targeted and that political violence in Togo was commonplace. *Eusebio at* 1091.

The Petitioner was threatened in while in detention. Her husband was also beaten severely enough to place him in the hospital. (Appendix F, 38a-39a). She claims that she was warned that she was an enemy of the state for distributing religious literature. The finding of the Eighth Circuit can be contrasted with description of negative persecution findings in other cases.

In *Zalega v. INS,* 916 F.2d 1257 (7th Cir. 1990) the claimant was detained by Polish authorities for association with a member of the Union Solidarity. *Zalega v. INS*, at 1258, 59. Even though the claimant was detained on numerous occasions, he was never threatened or abused physically. The court considered the situation in *Mendez-Efrain v. INS,* 813 F.2d 279, 283 (9th Cir. 1987) where it was found that although detained by the military for four days, the alien was released without being tortured, molested or threatened. The court found no substantial evidence that the Petitioner would be subject to persecution. In the present case, the Petitioner's have been tortured during detention. The Petitioner claims that she was hit in the stomach and almost fainted during a detention in 1992. The Petitioner's husband was beaten about the head and spent time in the hospital.

In *Mitev v. INS,* 67 F.3d 1325 (7th Cir. 1995) the court found that threats and dire warnings from coworkers did not

constitute persecution In *Mitev* the claimant was involved in a pro-democracy activities in Bulgaria. He helped the organization Podkrepa to propogate ideas and carry out preparation for the forthcoming elections in conjunction with 10-20 members of his workplace, a computer factory. *Mitev at* 1328. Mitev attended meetings, distributed literature and posted information as an unpaid volunteer. Mitev was threatened by coworkers on several occasions, one suggesting

In *Mitev v. INS,* the court found that Mitev presented no evidence of detention, arrest, interrogation, prosecution, imprisonment, illegal searches, confiscation of property, surveillance, beatings or torture. *Mitev at* 1330. In the present case, the Petitioners have been detained both in Soviet times and post Glasnost. They have been beaten and have been threatened. Their property has been under surveillance as have they.

III. The Petitioners own testimony and other proofs overcomes the presumption that there are changed country conditions as indicated in the Department of State Country Conditions Reports.

The Eighth Circuit Court of Appeals indicated that the Petitioners could not justify both their claims of past persecution and future claims of persecution due to the fact the their claims contrasted with the Department of State Country Conditions Reports. These reports indicated that there had been a relaxation of Religious oppression since the fall of the Soviet Union and that officially the Petitioners were free to practice their religion as they see fit. (Appendix A, 8a). The Petitioners claim a pattern of persecution that justifies a well founded fear of persecution should they return

to the Ukraine. (see *Makonnen v. INS,* 44 F.3d 1378 (8th Cir. 1995).

A presumption of changed country conditions can be overcome by evidence of specific danger to the asylum applicant. *Galius v. INS,* 147 F.3d 34, 36 (1st Cir. 1998), *Kossov v. INS,* 132 F.3d 405 (7th Cir. 1998). The Petitioner brought testimony which indicated that as a result of their association with the Seventh Day Adventists, they had been persecuted since the time of the Soviet Union. They claim that this persecution continued until recent times. The Petitioner claimed that her mother had been placed in mental institutions as a result of her participation in the Seventh Day Adventists. The Petitioner herself had been detained by the police in Soviet times. The Petitioner claimed that she was mocked and harassed by her fellow students while in primary school when she expressed her faith in God.

The Petitioner had continued to be subject to harassment and persecution following the fall of the Soviet Union. She was detained in 1992 by the KGB for distributing Seventh Day Adventist literature. She was again detained in 1994 for reporting vandalism of the Christian school property. She was told by the police investigator that she was opposing him as an Adventist and he would not tolerate that. The Petitioner was opposed at the University level by a professor who was the wife of the former president of the Ukraine. She would not allow her to take a necessary test, stating that there was no place for Seventh Day Adventists in the Ukraine.

The Petitioner was associated with a Christian School initially named "A. Cheventenko" after the leader of the Seventh Day Adventist movement in the Ukraine. They were later required to change this name to the school of the "Morning Sunrise" following threats from the civil authorities

of Kiev. Other edicts followed. As displayed in Appendix E. the civil authorities of Kiev required that the School remove from its curriculum the phrase, "the bible is Gods word" and closure of the school for this violation in 1993. The Petitioner indicated that the school had been closed on several occasions and finally allowed to proceed only as a school with secular curriculum.

The Eighth Circuit Court indicated that these specific instances of conduct were not sufficient to overcome the presumption of changed country conditions and religious freedom exhibited in the State Department Country Conditions Reports. According to dicta in *Galius v.INS,* 147 F.3d 34, 36 (1st Cir. 1998) it is well known that the State Department "soft pedals" country conditions regarding nations that it wishes to promote improved relations with. (see also *Gramatikov v. INS,* 128 F.3d 619, 620 (7th Cir. 1997)). In *Galius* the presumption of changed country conditions in Lithuania was overcome by a pattern of specific threats. The Eighth Circuit indicated that in contrast to the situation in *Galius,* the Petitioner had not provided specific evidence to contradict the State Department. As previously mentioned, the Petitioner did supply documentation regarding the forced closure of the Christian School in Kiev in spite of a law allowing religious freedom. The Petitioner has indicated that the former Soviet Regime identified three categories of Christian practitioners who were identified as enemies of the state; Baptists, Adventists and Protestants, called Sectants. Many of these were grouped in the category of Evangelicals.

The Eighth Circuit Court indicated that pursuant to the ruling in *Bocur v. INS,* 109 F.3d 399 (7th Cir 1997) that there was no evidence that the Petitioners were unable to practice their religion or that the government treated other private

schools differently. (Appendix A, 10a). In *Bocur,* the court stated that official discrimination elevates its severity. *Bocur at* 403. The Eighth Circuit indicated that the closing of all of a religious sects schools and leaving others of different belief open would constitute persecution. (Appendix A, 10a). The Petitioners would indicate that the forced closing of their school which was perhaps the only such school in Kiev constituted persecution.

The Petitioners claim that they have been harassed in a significant way to control and perhaps discontinue their participation in the Seventh Day Adventist Movement. They claim that there is official impritur to suppress all of the evangelical or fundamentalist types of Christian belief in the Ukraine and that this is a carryover from the Soviet times when such religious practice was severely discriminated against. They have provided substantial evidence regarding various events in their lives which support a view contrary to that indicated in the Country Conditions Reports.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Nataliya Kondakova
Yuriy Kondakov
Olga Kondakov

Pro Se

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 02-4151

[Filed July 29, 2004]

Nataliya Vladimironva Kondakova;)
Yuriy Leonidovich Kondakov;)
Olga Yrievna Kondakova,)
Petitioners,)
)
v.)
)
John Ashcroft, Attorney General of)
the United States of America,)
Respondent.)

Petition for Review of an Order of the
Board of Immigration Appeals
A75 256 100

Before MELLOY, McMILLIAN and COLLOTON, Circuit Judges.

OPINION

McMILLIAN, Circuit Judge.

Petitioners Nataliya Vladimironva Kondakova,[1] her husband, Yuriy Leonidovich Kondakov, and their daughter, Olga Yrievna Kondakova, who are citizens of the Ukraine, seek review of a final order entered by the Board of Immigration Appeals (the Board) summarily denying their request for asylum and withholding of removal. *In re Kondakova*, No. A75 256 100 St. Paul (B.I.A. Nov. 27, 2002) (order). For reversal, petitioners argue that substantial evidence did not support the Board's decision that Kondakova's claims of past and future religious persecution were not credible. For the reasons discussed below, we deny the petition for review.

We have jurisdiction to review the order of the Board pursuant to 8 U.S.C. § 1252(a). *See also id.* § 1252(b)(1), (2) (venue proper in this circuit because proceedings were held in Minnesota).

In July 1996 petitioners entered the United States through Chicago IL as business visitors. They remained in the United States after the expiration of their visas. In December 1997 the Immigration and Naturalization Service (INS) issued a notice to appear, charging them with being subject to removal. Kondakova filed an application for asylum (which was also deemed to be an application for withholding of

---

[1] Nataliya Vladimironva Kondakova is the principal applicant; her husband, Yuriy Leonidovich Kondakov, and their daughter, Olga Yrievna Kondakova, are derivative applicants. Because Nataliya Vladimironva Kondakova is the principal applicant, all references to "Kondakova" are to her.

removal) on the basis of religious persecution. Kondakova was born in Kiev, Ukraine, in 1972. She and her husband, who is also a citizen of the Ukraine, married in 1994, and they have two young children (their daughter Olga Yrievna Kondakova was born in the Ukraine; the second child was born in the United States). Kondakova has been a member of the Seventh Day Adventist Church since 1980. She graduated from the Kiev University in 1996 with degrees in hydrogeology and mineralogy and qualified to work as an engineer. She taught Russian language and literature at a Seventh Day Adventist Church day school in Kiev from 1993 to 1996.

At the administrative hearing before the immigration judge, Kondakova testified about several incidents of religious persecution she suffered in the Ukraine. She testified that she was mocked and taunted as a child, and that in 1982 she and her sister were arrested and her mother was confined to a mental institution for 14 days (as a means of intimidating the mother). She also testified that in 1992 she was arrested and imprisoned overnight by the KGB for distributing religious literature, and that she was beaten while in jail. She also testified that the church day school was vandalized in the spring of 1994. The vandals broke windows, wrote graffiti on the walls and left an anti-religious note on the door. In September 1994 a rock wrapped in a threatening note was left at the school. The note stated that the next time it would be a grenade rather than a rock. Kondakova testified that when she complained to the ministry of security about the vandalism and official indifference, the government investigator detained her for several hours. She also testified that one of her university instructors was biased against Adventists and she had to switch professors in order to pass the course.

Kondakova also testified that on June 26, 1995, her infant

daughter was kidnapped. She testified that this traumatic event prompted her to come to the United States. She testified that when she went to the militia to report the kidnapping, the head of the militia made a disparaging remark about her religious beliefs. She testified that, when she returned home, she found a note that said she did not deserve a daughter because of her religion. She testified that the militia called and said that they had the child. Kondakova testified that her daughter was left on the doorstep with a note that said that they wondered which is more important to people, their children or their faith, and that they will have to choose.

Kondakova also testified that the government closed the church day school in September 1995 because the school name was religious and because there were prohibitions against Bible study. She also testified that the church day school is now open but that it had been closed and reopened on various occasions.

She also testified that on March 20, 1996, her husband was beaten up. She testified that her husband gave financial support to the church day school and that she believed that was the reason for the beating. Her husband testified that in 1993 he bought oil products that he left in the possession of a state organization. He testified that the state organization later became private and there was a dispute about the ownership of the products. There was litigation about the dispute and he ultimately won the case. He testified that he did not know the identity of his attackers or the motive. However, he acknowledged that in the asylum application he indicated that the defendant firm had hired racketeers to "deal with his family." He also testified that he opposed the current Ukrainian government.

The immigration judge (IJ) concluded that petitioners

failed to produce sufficient or concrete direct evidence to show that they have a well-founded fear of religious persecution. The IJ specifically found that petitioners' testimony was not "sufficiently detailed, consistent or believable to provide a plausible and coherent account of the basis for [their] fears." Slip op. at 12 (transcript of oral decision). In particular, the IJ noted that "all of the major incidents described in their testimony relating to the incidents of religious persecution were not even mentioned in the initial asylum application." *Id.* Kondakova explained that a neighbor helped her prepare the application and that she did not know exactly what incidents had been included in the application, that she did not read or write English, and that she did not want to relive the traumatic events. The IJ did not credit the explanation. *Id.* at 12-13 (noting that the most serious incident, the kidnapping of their daughter, was not included in the application, and that petitioners are highly educated and reasonably should have been expected to insure that the information in the application was complete and accurate). The IJ was also concerned about the absence of any documentation about any of the incidents. *Id.* at 13 (noting, for example, that petitioners did not submit any police reports about the kidnapping).

The IJ also found that the incidents did not amount to persecution and that petitioners failed to show that the incidents were the result of their religious beliefs. *Id.* at 14. The IJ also noted that Kondakova's testimony about the status of the church day school was confusing. *Id.* at 15 (noting that Kondakova testified that the school was closed by the government in September 1995 but that she taught at the school until June 1996). The IJ also found that petitioners' claims of religious persecution were not consistent with the 1997 country conditions reports prepared by the Bureau of Democracy, Human Rights and Labor and the United States

State Department, which reported no evidence of harassment or persecution of Evangelical Christians in the Ukraine, or with the experience of Kondakova's mother who served as an elected government official. *Id.* The IJ also noted that petitioners failed to establish countrywide persecution, that is, that they would be persecuted in another part of the country. *Id.* at 16. Finally, the IJ noted that because petitioners failed to satisfy the lower burden of proof for eligibility for asylum, they also failed to satisfy the higher burden of proof for eligibility for withholding of removal. *Id.* The IJ granted petitioners voluntary departure.

The Board summarily affirmed the decision of the IJ, and this petition for review followed.

> The [Board's] determination that an alien is not eligible for asylum or withholding of [removal] is reviewed for substantial evidence, and may not be overturned unless "the evidence was so compelling that no reasonable fact finder could fail to find the requisite fear of persecution." "Under this standard, this court must determine whether, based on the record considered as a whole, the [Board's] decision was supported by reasonable, substantial, and probative evidence." This court defers to an immigration judge's [adverse] credibility finding where the finding is "supported by a specific, cogent reason for disbelief."
>
> Under the Immigration and Nationality Act, the Attorney General has the discretion to grant asylum to a refugee, defined as a person who is unable or unwilling to return home "because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social

> group, or political opinion." "In most cases, the critical inquiry is whether the applicant has a well-founded fear of future persecution upon return to his or her country." The applicant must demonstrate a fear that is subjectively genuine and objectively reasonable. For an alien's fear of persecution to be objectively reasonable, the fear must have a basis in reality and must be neither irrational nor so speculative or general as to lack credibility. "The applicant is entitled to a presumption of a well-founded fear of future persecution if past persecution is established, and the burden then shifts to the [government] to show by a preponderance of the evidence that 'conditions in the applicant's country . . . have changed to such an extent that the applicant no longer has a well-founded fear of being persecuted if he or she were to return.'"

Perinpanathan v. INS, 310 F.3d 594, 597-98 (8th Cir. 2002) (citations omitted). Kondakova argues that her testimony provided the requisite specific and detailed incidents of religious persecution and, even though some of the incidents were not included in the asylum application, she mentioned some of them generally. She argues that the inconsistencies were due to a combination of a neighbor's assistance in filling out the application, their lack of proficiency in English, and their ignorance about what to include in the application. She also argues that she does not need corroborating evidence to establish her credibility given the specific and detailed nature of her testimony. She also argues that her specific and detailed testimony contradicts the State Department's country conditions report.

The IJ noted the numerous inconsistencies between

petitioners' testimony and the asylum application as the basis for the adverse credibility determination. While minor inconsistencies and omissions will not support an adverse credibility determination, inconsistencies or omissions that relate to the basis of persecution are not minor but are at "the heart of the asylum claim." *Chebchoub v. INS*, 257 F.3d 1038, 1043 (9th Cir. 2001) (citation omitted). Here, as noted by the IJ, petitioners' asylum application did not refer to the most serious incidents of religious persecution, specifically, Kondakova's arrest in 1992, the incidents of vandalism at the church day school in 1994, or the kidnapping of her daughter in 1995. Kondakova did not present any documentation of these incidents, such as copies of the police reports or the threatening notes. These incidents are not minor but go to the heart of her claims of religious persecution.

Kondakova argues that corroboration is not essential to establish credibility, citing *Sotelo-Aquije v. Slattery*, 17 F.3d 33 (2d Cir. 1994). We believe that case is distinguishable. In that case, the Board found that the applicant was credible. *Id.* at 37 n.2 (noting that, with credible testimony, applicant need not present other corroborating evidence to establish eligibility for asylum). "[An applicant's] testimony, if credible, may be sufficient to sustain his [or her] burden of proof without corroboration. However, . . . 'if the trier of fact either does not believe the applicant or does not know what to believe, the applicant's failure to corroborate his [or her] testimony can be fatal to his [or her] asylum application.'" *Chebchoub v. INS*, 257 F.3d at 1042 (citation omitted). Here, the IJ found that Kondakova was not credible and her failure to provide any corroborating documentation seriously undermined her claims of religious persecution.

Kondakova also argues that the State Department's

country conditions report is not binding, citing *Gailius v. INS*, 147 F.3d 34 (1st Cir. 1998). In that case the IJ found that the applicant's testimony was inconsistent with the general country conditions. Because the applicant's testimony about the threats to his family was corroborated by specific documentary evidence, including copies of the threatening letters and an affidavit of his father, the court of appeals held that the IJ could not reject the applicant's testimony on the basis of the general country conditions and instead must also determine that the other evidence was not genuine or, for some other adequate reason, not persuasive. *Id.* at 45. "[G]eneral changed country conditions . . . . are relevant in assessing an applicant's credibility because an uncorroborated story that is at odds with what is known about country conditions is less likely to be accurate than one that is consistent with country conditions." *Id.* n.6. Here, as in *Gailius*, the IJ concluded that Kondakova's testimony was inconsistent with the State Department's country conditions report. However, unlike the applicant in Gailius, Kondakova did not produce any corroborating documentary evidence of the major incidents of alleged religious persecution or any evidence of changed country conditions.

In sum, Kondakova's omissions, inconsistencies and failure to provide corroborating evidence provided specific and cogent reasons to support the IJ's adverse credibility determination, and those reasons are supported by substantial evidence in the record.

We agree with the IJ that Kondakova failed to show past persecution or a wellfounded fear of future persecution on account of religion. Persecution "involves 'the infliction or threat of death, torture, or injury to one's person or freedom, on account of' one of the enumerated grounds in the refugee definition. The mere presence of some physical harm does not

require a finding of past persecution." *Tawm v. Ashcroft*, 363 F.3d 740, 743 (8th Cir. 2004) (citation omitted). Kondakova testified that she was taunted as a child and was insulted by the militia and government officials. Slurs and harassment do not constitute persecution. *See, e.g., Fisher v. INS*, 291 F.3d 491, 497 (8th Cir. 2002). Kondakova also testified that she was briefly detained several times, that she was beaten up while in jail but did not require medical attention, and that her husband was beaten up. "Minor beatings and brief detentions, even detentions lasting two or three days, do not amount to [religious] persecution, even if government officials are motivated by [religious] animus." *Eusebio v. Ashcroft*, 361 F.3d 1088, 1091 (8th Cir. 2004) (citations omitted). Kondakova failed to produce any evidence to document or corroborate any connection between the kidnapping and her religion. The fact that Kondakova remained in the Ukraine for a year after the kidnapping and completed her university education weighed against a finding of past persecution. *See, e.g., Fisher v. INS*, 291 F.3d at 497. In addition, although Kondakova testified that she believed that her husband was beaten up because of his financial support of the church day school, her husband did not testify about a religious motive, and the asylum application attributed the beating to a commercial dispute and litigation. Kondakova also testified that the government forced the church day school to remove the religious reference from the school name and curriculum. However, there was no evidence that petitioners were unable to practice their religion or that the government treated other private schools differently. *See, e.g., Bucur v. INS*, 109 F.3d 399, 405 (7th Cir. 1997) (noting that forbidding practice of religion and closing all of religious sect's schools but no other private schools would be persecution).

Because petitioners failed to demonstrate past persecution,

they are not entitled to a presumption of future persecution and "must independently establish a wellfounded fear of future persecution, based on both objective and subjective elements." *Tawm v. Ashcroft*, 363 F.3d at 743 (citation omitted). "[The applicant] must genuinely fear persecution and must provide credible, specific evidence that a reasonable person in his [or her] position would fear persecution if returned." *Id.* Kondakova failed to show that her fear of future persecution was either well-founded or reasonable. As noted by the IJ, Kondakova's claims of future religious persecution are inconsistent with the country conditions reports (which she did not rebut), her mother's service as an elected government official (despite the mother's religious affiliation), and the apparent reopening and continued operation of the church day school. *Cf. Manivong v. District Director*, 164 F.3d 432, 433 (8th Cir. 1999) (noting fear of future persecution may not be objectively reasonable if immigrant attends school and works in home country and family lives there for years without incident).

Finally, the IJ did not err in holding that petitioners failed to satisfy the requirements for withholding of removal.

> Withholding of removal involves a higher degree of certainty that persecution will occur than that required for asylum eligibility. Before the government will grant withholding, the alien must present evidence to establish that it is "more likely than not that the alien would be subject to persecution on one of the specified grounds." This standard requires an objectively established "clear probability."

Tawm v. Ashcroft, 363 F.3d at 744 (citation omitted). Because Kondakova failed to carry the lesser burden of proof to demonstrate asylum eligibility, she necessarily failed to meet

the higher burden of proof required for withholding of removal.

Accordingly, the petition for review is denied.

APPENDIX B

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

No. A75 256 100 - St. Paul

[Filed November 27, 2002]

In re: Nataliya Vladimirovna Kondakova

In Removal Procceedings

ORDER

PER CURIAM. We affirm the decision of the Immigration Judge. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994) (noting that adoption or affirmance of a decision of an Immigration Judge, in whole or in part, is "simply a statement that the Board's conclusions upon review of the record coincide with those which the Immigration Judge articulated in his or her decision"). On appeal, the respondent proffered additional documents to support his application for relief. The record we review on appeal is the record before the Immigration Judge. *Matter of Haim*, 19 I&N Dec. 641 (BIA 1988). The respondent has not filed a motion to reopen based upon new evidence. We note that consideration of such new evidence would not change the result in this case. The respondent also argues taht the Immigration Judge erred in refusing the admit into evidence

untranslated documents. We find no merit to the respondent's contention as the regulations clearly indicate that foreign documents must be translated. 8 C.F.R. § 3.33. Accordingly, the appeal is dismissed.

FURTHER ORDER: Pursuant to the Immigration Judge's order and conditioned upon compliance with conditions set forth by the Immigration Judge and the statute, the respondent is permitted to voluntarily depart from the United States without expense to the Government, within 30 days from the date of this order or any extension beyond that time as may be granted by the district director. *See* section 240B(b) of the Immigration and Nationality Act; 8 C.F.R. §§ 240.26(c), (f). In the event the respondent fails to so depart, the respondent shall be removed as provided in the Immigration Judge's order.

NOTICE: If the respondent fails to depart the United States within the time period specified, or any extensions granted by the district director, the respondent shall be subject to a civil penalty of not less than $1,000 and not more than $5,000, and shall be inelgible for a period of 10 years for any further relief under section 240B and sections 240A, 245, 248, and 249 of the Immigration and Nationality Act. *See* section 240B(d) of the Act.

/s/_____
FOR THE BOARD

APPENDIX C

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
7850 Metro Parkway, Room 320
Bloomington, MN 55425

No.A 75-256-100
A 75-256-099
A75-156-098

[Filed August 19, 1998]

IN REMOVAL PROCEEDINGS

In the Matter of Nataliya Vladimironva Kondakova;
Yuriy Leonidovich Kondakov;
Olga Yrievna Kondakova

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on August 19, 1998. This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

Respondent's application for voluntary departure was granted until Sept. 18, 1998 upon posting a bond in the amount of $500.00 per person with an alternate order of removal to Ukraine.

Respondent's application for asylum was denied.

Respondent's application for withholding of removal was denied.

Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.

Date: August 19, 1998

Appeal: Applicant

Appeal Due By: Sept. 18, 1998

/s/_____
Immigration Judge

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
St. Paul, Minnesota

No.A 75-256-100
A 75-256-099
A75-156-098

[Filed August 19, 1998]

IN REMOVAL PROCEEDINGS

In the Matter of Nataliya Vladimironva Kondakova;
Yuriy Leonidovich Kondakov;
Olga Yrievna Kondakova

CHARGE : Sections 237(a)(1)(B) of the Immigration and Nationality Act relating to aliens who are admitted as nonimmigrant visitors, who were authorized to stay in the United States for a temporary period and stayed beyond that time authorized.

APPLICATIONS: Political asylum pursuant to Section 208 of the Immigration and Nationality Act, withholding of removal pursuant to Section 241(b)(3) of the Immigration and Nationality Act, and voluntary departure pursuant to Section 240(b)(B) of the Immigration and Nationality Act.

ORAL DECISION OF THE IMMIGRATION JUDGE

The Respondents are a married couple and their child, who are natives and citizens of the Ukraine. The matter came before the Immigration Court as a result of a Form I-862, Notice to Appear, issued to the Respondents by the Immigration and Naturalization Service, which was marked and admitted as Exhibit No. I. The Notice to Appear indicates that the Respondents are removable pursuant to Section 237(a)(i)(B) of the Immigration and Nationality Act, which relates to aliens admitted as nonimmigrants under Section 101(a)(15) of the Act, who remained in the United States for a time longer than permitted.

The issue of removability was resolved at a prior Master Calendar hearing where the Respondents, through counsel, acknowledged proper service of a Notice to Appear, admitted the allegations of fact contained there, and conceded the charge of removability.

Based on the evidence of record, and the admissions of the Respondent's counsel, the Court finds that removability has been established in accordance with the law.

The Respondents seek relief in the form of political asylum pursuant to Section 208 of the Act, withholding of removal pursuant to Section 241(b)(3) of the Act in regards to their native country of the Ukraine. In the alternative, the Respondents requested voluntary departure pursuant to Section 240(b)(B) of the Act.

The Respondents' request for asylum in the United States was marked and admitted as Exhibit No. 2 in this case, and the attached supporting documents to that application, which were also considered to be part and parcel of Exhibit No. 2.

The U.S. State Department Report on Human Rights Practices for 1997 was marked and admitted as Exhibit No. 3, and the Profile of Asylum Claims and Country Condition Reports for the Ukraine was marked and admitted as Exhibit No. 4. The Court did not receive Exhibit 5 for identification, which was the action of the lead Respondent's mother to the presidium of the Supreme Court. And the reason that that was not admitted as an exhibit in this case, was because we did not have the original Ukraine document. Therefore, it was only marked as Exhibit 5 for identification, but not admitted. The Court received as Exhibit No. 6 in this case additional supplementary documents filed by the Respondent, which were admitted without objection by the Immigration Service. No other documentary evidence was submitted, however, the Court heard the testimony of both Respondents in this case.

STATUTORY REQUIREMENTS FOR ASYLUM AND WITHHOLDING OF REMOVAL

Under Section 208 of the Immigration and Nationality Act, the Attorney General, through an Immigration Judge, may grant asylum as a matter of discretion to an individual who is a refugee within the meaning of Section 101(a)(42) of the Act. This provision requires that the Respondent show that they are unable or unwilling to return to their native country, and unable or unwilling to avail themselves of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. See Section 101(a)(42) of the Act, see also INS v. Cardoza-Fonseca, 480 U.S. 421 (1987).

In order to establish a well-founded fear of persecution, an alien must show, one, that he or she possesses a belief or a characteristic a persecutor seeks to overcome in others by

means of punishment of some sort; two, that the persecutor is already aware or could become aware that the alien possesses this belief or characteristic; three, that the persecutor has the capability of punishing the alien; and four, that the persecutor has the inclination to punish the alien. Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987).

The United States Supreme Court has held that the well-founded fear standard requires a showing that the fear of persecution is based on a reasonable possibility that such harm will occur. INS v. Cardoza-Fonseca, 480 U.S. 421, 440 (1987). This standard is more generous than the clear probability standard applicable to withholding of removal.

The burden of proof is on the applicant for asylum to establish that he is a refugee as defined in Section 101(a)(42) of the Act. See Matter of Acosta, 19 I&N Dec. 211 (BIA 1985).

In some cases, the only available evidence of the alien's subjective fears may be the alien's own testimony. It can suffice where the testimony is believable, consistent and sufficiently detailed to provide a plausible and coherent account of the basis for the alien's fear. Matter of Mogharrabi, 19 I&N Dec. 439 at 445 (BIA 1987). In Matter of Dass, Int. Dec. 3122 (BIA 1989), the Board held that as an asylum applicant bears the evidentiary burden of proof and persuasion where there are significant and meaningful evidentiary gaps, applications for political asylum will ordinarily be denied for failure of proof.

The Respondents' request for asylum in the United States is contemporaneously viewed as an application for withholding of removal. In order to establish the eligibility for withholding of removal, the Respondent must show that his or

her life or freedom would be threatened in the country designated for removal on account of race, religion, nationality, membership in a particular social group, or political opinion. See Section 241(b)(3) of the Act. This statutory provision requires that the Respondent demonstrate a clear probability of persecution on account of one of the five grounds enumerated in the Act. See INS v. Stevic, 457 U.S. 407 (1984). This clear probability standard requires a showing that it is more likely than not that the alien would be subject to persecution. The standard for withholding of removal is more stringent.

Under the Refugee Act of 1980, withholding of removal is mandatory. A grant of political asylum, in the other hand, could be denied in the exercise of discretion, even if the alien establishes statutory eligibility.

SUMMARIZATION OF FACTS

The lead Respondent testified and the claim primarily relates to the Respondent's claim for religious persecution in the Ukraine. She testified that she was born on February 25th, 1972 in Kiev, Ukraine, and is 26 years old. She is married and was married to the other Respondent on March 4th, 1994. She has two children, one three and a half years old who was born in the Ukraine, the other three months old, born in the United States.

The lead Respondent graduated from Kiev University after six years of schooling in hydrogeology and mineralogy, and completed her engineering course in January 1996, and is capable of serving an engineer in her native country. She never did work as an engineer, however, because she began to work at a day school of the Adventist Church, beginning in September 1st, 1993. She taught children Russian language

and literature, and she wanted to be a teacher. She continued in that vocation from 1993 until June 16th, 1996, and she came to the United states in July 1996.

The Respondent testified that she came to the United States because she and her mother were persecuted for political and religious reasons. She came as a visitor. She indicated that she was always persecuted in her country for religious reasons because she was a member of the Seventh Day Adventist Church. Her mother has been a member since 1980, and she became a member in 1993. She indicated that her mother was always a religious person. And that as a child in kindergarten, she was taunted and mocked as a result of her religious beliefs. She also indicated that at the university, the KGB arrested her on September 11th, 1992, for distributing religious literature and tracts to homes. She was taken to the ministry of the secretary of security and they started to threaten and beat her. She indicated that the law in her country does allow distribution of religious tracts. She was put in a cell with homeless people and alcoholics. She was detained for one night. She had no court hearing. She was not charged with anything. They just told her that she was guilty of spreading foreign sectant literature. She indicated that she was beaten on the head and stomach and almost fainted, but she received no medical treatment, and has no official documentation to establish that the incident occurred.

She further indicated that at the end of April or May, 1994, some hooligans broke windows at her church school and wrote graffiti on the wall. There was also a huge note on the door threatening the school and indicating that the people should not be thinking about God. She indicated that it was a christian church school, and that her mother started this school, and her mother does Bible teaching for the church at

the present time. She is unfamiliar as to how her mother derives her income.

The Respondent testified that as a result of the vandalism, she went to the ministry to complain, and she was not satisfied that they did anything about her complaints. The church was allowed to operate, but they ordered the school closed on September 27th, 1995, because there was religion in the name of the church school, and because there were prohibitions against Bible studies. She indicated that the school is now functioning, but it has been opened and closed on various occasions.

She indicated that she lived with her mother until she married in March, 1994. She went to the ministry of security to investigate the hooliganism. In September, 1994, there was a big stone wrapped in paper, and the paper said that the next time it would be a hand grenade rather than a stone. She complained to the ministry of security and panicked and made some statements to the effect that because of their indifference, the school could be destroyed. At that time, the investigator took offense at her statements and put her in a cell for approximately four hours where she was cold and they made disparaging remarks about her being pregnant and the health of her unborn child. She also indicated that in 1994, that she had difficulties with a course taught in political history by the wife of the president, and basically that instructor was biased against Adventists and she feels she could not pass the professor's tests as a result of being an Adventist. She was able to pass the test with a different professor.

On June 26, 1995, she indicted that the worst event occurred, which prompted her to come to the United States. Her daughter was kidnapped when she was six months old.

The Respondent was giving directions to people in a car as to how to get to a street. When she returned to the baby carriage, the baby was gone. She went to the head of the militia, and wrote up a complaint, and as she was writing the complaint, they asked her if she was such a religious person, why did not she just pray instead of coming to the militia for help. The Respondent's mother also called the reception room to the president to threaten that if the child was harmed, a complaint would be made about the head of the militia's conduct. When she came home from the militia, there was a note on the door that said, you do not deserve a daughter because of her religion. Subsequently, the department of militia called and said that they had the daughter. The daughter was returned to their home but left on the step. With the child was a note, which indicated they wondered which is more important to people, their children or the faith, and they will have to choose.

On March 20th, 1996, the Respondent's husband was beaten. She indicated that her husband gave financial support to the school, and she believes that that is the reason for his beating. He spent 10 days in the hospital and subsequently had a court hearing relating to the litigation and won. She indicated that she cannot go home because their life would be on the line. She has no documents to establish that the kidnapping occurred.

When asked why all this information was not in her asylum application, she indicated that she did not have help in preparing the application, and did not want to relive the trauma of what had happened to her. She indicated that the school was allowed to operate, but ordered closed in September 27, 1995, and it was opened and closed at various times.

On cross-examination, she indicated that the main reason for claiming asylum was for religious reasons. She did not know that the kidnapping incident was not indicated on her asylum application, as she does not read English and she was helped with the application by a neighbor. She acknowledged that she did wait over a year after the kidnapping incident to leave the Ukraine, but she still hoped that the situation would be getting better. She did complete her requirements for the diploma subsequent to the kidnapping incident. The Seventh Day Adventist School opened on November 23rd, 1993, for students. She went to the ministry to complain about graffiti and vandalism at the school in numerous occasions. Her mother had the same type of education as she has in engineering and hydrogeology, but she was deprived of her income beginning in 1979. Her mother was elected as the regional Soviet Peoples Deputies, and through that elected position, she was instrumental in assisting the school in opening. She held that position from 1992 through 1995, and it is an elected governmental position. Her mother is still in Kiev and still teaches at the church school. She does not really know who attacked the husband. After 1995, they deleted the christian name from the name of the school and opened as a regular school. She does not know if the school is now opened or closed as it keeps opening and closing. In 1989, her mother applied for political asylum and was told that she would have to wait for the papers to be processed, and her mother has been waiting for 10 years. In 1982, she and her sister were arrested by the American consulate, and they were grabbed and put in a car, and her mother was confined to a mental institution and treated for 14 days. Her mother was not ill, however, that was the way they threatened and intimated people during that time. The Ukraine became independent in 1990.

The Respondent's husband testified that in 1993 he bought oil products. He left his property in the hands of a state organization, which ultimately became private, and had a dispute with respect to the oil property that he maintained. He subsequently went into litigation over that issue, and he ultimately prevailed. He does not know who attacked him prior to that court hearing, and he acknowledged that the asylum application indicated that the defendant firm had hired a group of racketeers to deal with his family. He does not know for sure who beat him or what the motivation for the beating was. He also denounced the present government in the Ukraine indicating that the State Department Reports portray him as an adequate and a freedom and democratic leader, however, with the leader's past history, this Respondent does not believe that democratic reforms have been accomplished, and that he is fearful of returning to his country for those reasons.

LEGAL ANALYSIS AND CONCLUSIONS

The Court concludes that the Respondents failed to introduce sufficient or concrete direct evidence to show that they have a well-founded fear of persecution on account of one of the five enumerated grounds. The Respondents did provide quite a substantial amount of documentation, however, some of this documentation did not really relate to the nature of the claims as they testified to, but rather provided other information. The Court also found suspect some of the documentation and had questions as to how these documents corroborated the Respondents' claims.

After careful review of the record, the Court finds that the Respondents' testimony was not sufficiently detailed, consistent or believable to provide a plausible and coherent account of the basis for the aliens' fears, and thus cannot

suffice to establish their eligibility for asylum and/or withholding of removal.

The Court was most concerned over the facts that the major incidents, all of the major incidents described in their testimony relating to the incidents of religious persecution were not even mentioned in the initial asylum application. The Court heard their explanation that they were assisted by a neighbor and did not have professional assistance, and further that they did not speak or read English and were not exactly sure what incidents were included in the asylum application. However, the Court must also review the facts that the Respondents are highly educated individuals and would expect that they would have taken the caution to insure that the information on their asylum application was complete and accurate, and accurately represent their claims of persecution. That was not at all the case. In fact they signed the application in Court this morning indicating that the information was true and accurate to the best of their knowledge. There were passing references to being arrested in the past. There was a reference to the Respondent being arrested at age seven near the American embassy in Moscow, that she was arrested several times thereafter, and the last time she was interrogated was in connection with the close down of the christian school. The Court did hear some testimony about an incident in 1982, however, the Court heard no testimony with respect to an interrogation with respect to the close down of the school. There was no specific information with respect to the arrest and beating by the KGB in 1992, nor the reporting of the hooliganism and vandalism incidents in May and September 1994. Finally, and most importantly, the event which the Respondents indicated lead them to come to the United States, the kidnapping of their child, was not mentioned in the slightest way. And certainly the event that lead them to the

United States for fear of religious persecution, should have been documented and mentioned in the asylum application.

The Court was further concerned over the fact that there was absolutely no documentation with respect to these serious alleged arrests and incidents. There was no police reports with respect to the kidnapping. There were various notes that were allegedly left with the baby and on rocks that were threwn through the windows. Those notes were not provided to the Court and no documentation was submitted with respect to those incidents. Further, in the initial asylum application, the husband's beating was referred to as being the result of the husband's commercial activities and the fact that he was involved in a law suit and that the defendant firm had hired racketeers to deal with his family relating to the civil suit. There was no reference in the initial asylum application that this beating was in any way attributed to the lead Respondent's religious beliefs or activities. She attempted in her testimony to portray them to be related based upon the fact that the husband provided financial support to the church school. However, the Respondent's husband in his testimony did not even raise that as a potential issue or concern.

The Court further finds that the incidents alleged here do not rise to the level of persecution within the meaning of the Act, and the Respondents have not met their burden of establishing that any of these alleged incidents resulted from their religious beliefs or religious persecution. They were not physically harmed in any way. The one incident relating the alleged beating did not result in the need for any kind of medical treatment, and the Respondents have not shown any nexus with the kidnapping, if it in fact occurred, was the result of any kind of religious harassment as that information was not documented or corroborated other than through the Respondent's own testimony.

The Court was confused with respect to the testimony and the information about the school that the Respondent was involved with. There might have been some issues with respect to the amount of religion that could be taught at that school, but in the asylum application, she portrayed the school as being closed. Later she testified that she was working a teacher throughout up until 1996, and basically at the end was equivocating as to whether or not she knew whether or not the school was presently being operated or not. That in spite of the fact that the mother was closely involved in the school in its inception and subsequent teaching responsibilities.

The Court would also find that the Respondents' claims of persecution are contrary to the information portrayed in the Country Condition Reports. There is no indication in the Country Condition Reports that Seventh Day Adventists are particularly selected for persecution and/or harassment. And quite the contrary, it would appear that the Respondent's own mother became an elected official in the Ukraine with responsibility for establishing schools and/or allowing schools to operate. And she was instrumental in getting the school started and allowing it to operate within the confines of the government. Therefore, the Respondent's claims of religious persecution relating to this school and government intervention in the school are not supported by the Profile of Asylum Claims and Country Conditions or even the Respondent's own testimony with respect to her mother's official as an elected capacity in that government.

In addition, the Respondent has not established countrywide persecution in Matter of Acosta, 19 I&N Dec. 211 (BIA 1985). The Board of Immigration Appeals held the requirement that an alien must be unwilling or unable to return to a particular country because of persecution or a

well-founded fear of persecution, requires an alien to do more than show a threat of persecution in a particular place or abode within a country. Rather he or she must show that the threat of persecution for him or her exists countrywide. Matter of Fuentes, 19 I&N Dec. 658 (BIA 1988). The Respondent has lived in only area of the Ukraine and there is no indication that if she were harassed as a result of her teaching activities, that she could not move to other cities or areas in the Ukraine without fear of harassment.

Inasmuch as the Respondent failed to satisfy the lower burden of proof required for asylum, it follows that she also failed to satisfy the clear probability standard of eligibility required for withholding of removal. See INS v. Stevic, 467 U.S. 407 (1984). The evidence does not establish if they were now to return to the Ukraine it is more likely than not that they would be subject to persecution on account of one of the five grounds enumerated in Section 241(b)(3) of the Act.

Section 240(b)(B) of the Act provides that at the conclusion of removal proceedings, the Attorney General may permit an alien voluntarily to depart the United States at the alien's own expense if the alien has been physically present in the United States for a period of at least one year immediately preceding Service of the Notice to Appear, is and has been a person of good moral character for at least five years, is not deportable as an aggravated felon or on security or related grounds, has established by clear and convincing evidence that they have the means to depart the United States and intend to do so. Under 8 C.F.R. Section 244.26(c)(2), clear and convincing evidence of means to depart shall include, in all cases, presentation by the alien of a passport or other travel documentation sufficient to assure lawful entry into the country to which the alien is departing. An alien permitted to

depart voluntarily must post a voluntary departure bond in an amount necessary to insure that the alien will depart.

The Court believes that the Respondents meet the statutory requirement for voluntary departure and they merit a favorable exercise of discretion with respect to voluntary departure. The Court will grant voluntary departure for a period of 30 days until September 18th, 1998, and will require the posting of a $500 bond for each Respondent within, which must be posted with the District Director at the Immigration Service within five business days of this order.

In light of the foregoing and after considering all that the testimony and documentary evidence as entered, the following order will be entered:

ORDER

WHEREFORE IT IS ORDERED that the Respondents' application for political asylum pursuant to Section 208 of the Act be denied.

WHEREFORE IT IS ORDERED that the Respondents, application for withholding of removal pursuant to Section 241(b)(3) of the Act be denied.

WHEREFORE IT IS ORDERED that in lieu of removal the Respondent shall be granted voluntary departure without expense to the Government for a period of 30 days or until September 18th, 1998, or any extensions beyond such date as may be granted by the District Director and under such conditions and the District Director shall direct.

WHEREFORE IT IS FURTHER ORDERED that if the Respondents fail to depart when and as required, the privilege of voluntary departure will be withdrawn without further

notice, and the proceedings in the following order shall thereupon become immediately effective; Respondents shall be removed and deported from the United States to Ukraine on the charges contained in the Notices to Appear.

/s/_____
MAHLON F. HANSON
Immigration Judge

APPENDIX D

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
401 S. LaSalle Street, 8th Floor
Chicago, IL 60605

No.A75 256 100
A75 256 099
A75 256 098

[Filed December 10, 1997]

Nataliya Kondakova
135 Nathan Lane North, Apt. #232
Plymouth, Minnesota 55441

Referral Notice

Dear Ms. Kondakova:

This letter refers to you Request for Asylum in the United Stated (Form I-589). Applicants for asylum must credibly establish that they have suffered past persecution or have a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, and that they merit a grant of asylum in the exercise of discretion.

For the reason(s) indicated below, we have not granted your claim for asylum:

You have not established that you are a refugee because:

A. Past Persecution

You have not established that any harm you experienced in the past, considering incidents both individually and cumulatively, amounts to persecution.

You have not established that any harm you experienced in the past is on account of one of the protected characteristics in the refugee definition (race, religion, nationality, membership in a particular social group, or political opinion).

AND

B. Future Persecution

You did not establish that there is a reasonable possibility you would suffer persecution in the future.

You have not established that the persecution you fear in the future exists throughout your country (or, if stateless, country of last habitual residence) or that it would be unreasonable for you to relocate within that country to avoid future persecution.

You have not established that your fear of future persecution is well-founded, because you have not shown that your government is

unable or unwilling to protect you from the harm you fear.

Based on the above reason(s), your case has been referred to an immigration judge. This is not a denial of your asylum application. You may request asylum again before an immigration judge and your request will be considered (without additional refiling) when you appear before an immigration judge at the date and time listed on the attached charging document. The determinations that we have made in referring your application are not binding on the immigration judge, who will evaluate your claim anew.

If you asylum application was filed on or after January 4, 1995, the following information applies to you. This referral has no effect on when you may apply for employment authorization (unless you failed without good cause to appear for your asylum interview or provide a competent interpreter). If an immigration judge does not deny your asylum application within 150 days of the date of your asylum application was first accepted by the INS (not including any delays in processing you have sought or caused), then you will be eligible to submit a Form I-765 request for employment authorization with the INS. If you have not already done so, you are currently eligible to apply for employment authorization because the 150 days have lapsed.

Sincerely,

/s/_____

Robert W. Esbrook
Chicago Asylum Office Director

APPENDIX E

CITY ADMINISTRATION
City of Kiev, Minsk Region
Department of Education
254211 Kiev-211, L. Gavro Str 11-A
Phone 481-63-31

June 10, 1998
Number 450

Information Letter

This letter issued to principal of privet Christian School L.A. Sheludenko. We informed you on September 1993 about cancellation of "Bible is God's words" from course of study.

Reason: Order of Ukrainian President number 942/95 from November 10, 1995 "Actions for Improvement Educational Administration". We inform you about closing Privet Christian School "Morning Sunrise", reason – violation of our order from September 1993.

A.I. Kapichin, Manager of Regional Department of Education, will control school closing.

Manager of Minsk
Dep. Of Education /signature/ A. Kapichin

SEAL

I, Rafail Shirl, Notary Public of Hennepin County, State of Minnesota Certify that I am fluent in both the English language and the Russian language. I further certify that attached translation as a true and correct translation of the original document.

/s/_____

Minneapolis, Minnesota
August 8, 1998, Notary Public

APPENDIX F

Ministry of Health
of the Ukraine
Main Regional
Medical Organization
of the city of Kiev
Kiev Regional Hospital
for the Veterans of W.W.II
04.01.96
87
City of Kiev
26 Chrnoflotskaya St.
Phone: 431-9520

NOTICE

Has been issued to Mr. Kondakov Yuriy Leondivoich to confirm that he was an inpatient at the Surgical Traumatology Clinic of the Hospital for W.W.II Veterans from 03.20.96 to 04.01.96, with sever injuries, resulting from assault and battery, committed by unknown persons.

Was brought to the hospital in moderately grave condition, with nose bleeding, periodically was losing consciousness.

Discharged on 04.01.96 to be followed at the clinic, serving his place of residence with the diagnosis: brain concussion, fracture of nose bones, without displacement.

End of Translation

I, Natalia Geilman, hereby certify that I am competent to accurately translate the Russian language into the English language by five years of education and by my knowledge, this is an accurate and complete translation into English of the Notice, presented to me in Russian.

Signed /s/_____

N. Geilman,
ATA Associate Member

Dated 12.16.96

APPENDIX G

ADRA
Adventist
Development
and Relief
Agency
Ukraine

Lukyanvskaya Str. 9B
254107 Kiev
Ukraine

0117-044-416-7839
FAX: 0117-044-416-8102

NOTIFICATION
of place of employment and salary

Issued to Kondakova Nataliya Vladimirovna to certify that she, from September 01, 1993, has been working at the Christian School of the Adventists, named after A. Zhivotenko, in the position of Assistant Principal in Elementary Education.

On May 01, 1996, her salary was 15,300,000 (fifteen million three hundred thousand karbovantsy).

Kondakova N.V. was one of the first teachers at the first Ukrainian Christian School of Adventists and made a valuable contribution towards its opening and its functioning.

School Founder	(Signature)	L. Tsibulskaya
Principal	(Signature)	L. Sheludchenko
Chief Accountant	(Signature)	T. Valuyeva

(Official Seal of the Issuing Institution)

End of Translation

I, Natalia Geilman, hereby certify that I am competent to accurately translate the Ukrainian language into the English language by five years of education and by my knowledge, this is an accurate and complete translation into English of the Notification, presented to me in Ukrainian.

Signed /s/_____

N. Geilman,
ATA Associate Member

Dated 12.16.96